

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 332 of 1986

in

SPECIAL CIVIL APPLICATION No 1511 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHRI N.V.JADEJA &10

Versus

STATE OF GUJARAT

Appearance:

Mr. S.R. Brahmhatt, Advocate for Appellants
Ms. Manisha Lavkumar, AGP for Respondent No. 1.
Mr. P.V. Hathi, Adv. for the Respondent No. 4 & 5.

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE A.K.TRIVEDI

Date of decision: 29/08/2000

ORAL JUDGEMENT(Per R.K.Abichandani, J.)

1. The appellants who are the original petitioners have challenged the decision of the learned Single Judge to the extent to which the relief of treating the original respondents nos.3 to 6 as irregular recruits has not been granted.

2. It appears from the judgment and order of the learned Single Judge that paragraph 6 of the resolution dated 3rd August, 1966 on the basis of which seniority position was given to the Ex Army persons was declared to be irrational and it was directed that the seniority of the original respondent nos.3 to 6 should be fixed according to correct legal principles in light of what has been observed in the judgment. Therefore, to this extent the original petitioners had succeeded.

3. The recruitment of these Ex Army persons as DYSP was done on the basis of the scheme reflected in the resolution dated 3-8-1966. As per that resolution, the Government considered that the rehabilitation of demobilized personnel who had volunteered to serve the country in a period of crisis was a problem which the nation, as a whole, had to face in a deliberate and constructive manner. Accordingly, for rehabilitation of the released Emergency Commission Officers and Short Service Regular Commission Officers, it was decided in consultation with the Gujarat Public Service Commission to reserve certain percentage of permanent and temporary posts in State Service (non technical) which were to be filled in by direct selection. The orders about reservation of vacancies, as indicated in the said resolution in State Class I and Class II non technical posts, were made effective from the date of issuance of the said resolution till 31st March, 1971, in the first instance. It is obvious that the policy of reserving certain percentage of vacancies for rehabilitating the released Emergency Commission Officers and Short Service Commission Officers was a rational policy. In fact, such a policy which had reflected in U.P. Non technical (Class II Service) Reservation of Vacancies for Demobilized Officers' Rules was upheld by the Supreme Court in the case of UNION OF INDIA VS. DR.S. KRISHNAMURTHY & ORS., reported in (1989) 4 SCC 689 in which the Supreme Court held that ECOs and SSCOs formed a definite class distinct from other officers recruited from the State services or other offices to the IFS and

IPS. It was held that the classification of ECOs and SSCOs was founded on an intelligible differentia. Therefore, the initial recruitment of the original respondents nos.3 to 6 cannot be held to be invalid on the ground that it was irrational or violative of Article 14 or 16 of the Constitution. It is not possible to agree with the submission of the learned Counsel for the appellants that at the time when the persons were recruited, they were not eligible for recruitment.

4. The learned Single Judge set aside paragraph 6 of the resolution which gave seniority to such Ex Army persons and held that the seniority assigned to the original respondents nos.3 to 6 was vitiated. The original respondents nos.3 to 6 had not challenged the said decision of the learned Single Judge and it appears that even the State Government has not challenged the same. Therefore, the directions of the learned Single Judge as regards the seniority position of the respondents nos.3 to 6 in the context of paragraph 6 of the resolution which has been set aside have remained unchallenged and the appellants obviously cannot have any grievance against those directions which were granted in their favour in the petition. Since the initial appointment of the respondents nos.3 to 6 cannot be held to be invalid there is no ground for interference with the impugned order to the extent it is challenged i.e for fixing their seniority, in this appeal. The appeal is, therefore, dismissed with no order as to costs.

5. The learned Counsel for the appellants states that the directions given by the learned Single Judge have not been implemented. If the directions have remained operative, it is needless to say, that they were required to be implemented in accordance with law.

(R.K.Abichandani,J.)

(A.K.Trivedi,J.)

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